

How the Government Records Council Resolves a Dispute: The Inquiry and Complaint Process

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The Government Records Council (GRC) assists public agency records custodians and the public (requesters) by providing information and resolving denial of access disputes.

The most convenient way to obtain information is to consult the Council's web site at www.nj.gov/grc. Many answers to questions can be found in the Public Information, Reference, and Records Notes sections.

In addition to the web site, information can be obtained from the Council staff by e-mail (grc@dca.state.nj.us), toll-free phone (866-850-0511), fax (609-633-6337), or by US mail at PO Box 819, Trenton, New Jersey, 08625. The Council has also developed an "Inquiry and Complaint" process to help resolve problems and disputes of requesters and custodians.

The focus of the GRC's process is to provide assistance and guidance as early in the process as possible to assist the parties to resolve the issue with the least amount of formal action being taken. The GRC staff is trained to assist with resolving concerns unique to such record access requests.

The inquiry and complaint process is summarized below.

Inquiry

- A requester or custodian makes an inquiry by toll-free phone, fax, e-mail, or regular mail. GRC staff contacts the requester to answer his or her questions.
 - Callers to the toll-free number are greeted by an auto-attendant that asks callers to record their information so that the staff will be able to research the matter and respond as quickly as possible.
- If the requester has questions about the law, GRC staff will attempt to provide guidance. If the problem is locating a government record, staff will attempt to guide the requester to the appropriate public agency.
- If a requester has difficulty obtaining access to a government record which the requester has already filed a written request under OPRA, GRC staff will offer to contact the custodian to try and resolve the matter.
- If this intervention fails to resolve the matter, the requester will be advised of his or her right to file a formal complaint with the GRC.

Complaint

- **Filing:**
 - A formal complaint is made to the GRC by submitting the Denial of Access Complaint form available from the [GRC's web site](#) or directly from the Council's office.
 - GRC staff will confirm that the custodian has received a copy of the complaint.
 - If a complaint is received from a requester who has not gone through the Inquiry process described above, GRC staff will review the Complaint and, in cases it deems appropriate, contact the parties for permission to attempt to settle the matter informally. If agreeable to the parties, staff will commence settlement efforts.

- **Mediation:**

- If the effort to informally settle fails, the requester and custodian will be offered impartial mediation conducted by the State's Office of Dispute Settlement. If mediation is accepted and it resolves the matter, the Complaint is dismissed.

- **Review:**

- If mediation is refused or fails, GRC staff will formally review the Complaint to determine if it is frivolous, outside the GRC's jurisdiction, or lacks factual basis. If so, the Executive Director will advise the parties in writing, the parties may then submit written comments. If the complainant disagrees with the conclusion, the Executive Director's recommendation and the parties comments will be presented to the Council for its determination at a public meeting.
- If the Executive Director determines that the complaint appears to present issues within the Council's jurisdiction, analysis and investigation of the Complaint will commence.

- **Investigation:**

- The Custodian submits a Statement of Information explaining the reasons why access was denied and attaches documents the Custodian wants the Council to consider in ruling upon the Complaint.
- The Executive Director issues written findings of fact and conclusions of law and presents them to the requester and custodian. The Director can recommend any of the following:
 - Dismiss for lack of jurisdiction, lack of factual basis, or frivolousness; or
 - Find the record accessible or confidential based on the papers; or
 - Find questions of fact prevent a conclusion regarding the accessibility or confidentiality of a record. A Council or OAL hearing or *in camera* review may be recommended.
- If parties agree with the Executive Director's recommendations, once compliance occurs, the complaint will be withdrawn. If they do not agree, the parties may submit written comment on the recommendations to the Executive Director, who may elect to revise the recommendations based on comments and submit the revised recommendations to the parties for their review and comment.
- If the matter remains unresolved, the complaint is scheduled for Council review, the parties are notified of the hearing and advised that their attendance is optional.

- **Adjudication**

- The Council reviews the Complaint, Custodian's Statement of Information, all comments and other material provided by parties and the Executive Director's recommendation.
- After consideration, the Council shall by majority vote:
 - Dismiss the complaint for lack of jurisdiction, lack of factual basis, or frivolousness; or
 - Determine whether the record(s) are accessible to the public. If access is granted, a Council resolution stating the basis for the decision will provide terms and conditions for access and attorney fees. If access is

denied the requester can appeal the Council's resolution stating the basis for its decision to Appellate Division of the Superior Court within 45 days; or

- Determine that a hearing is required, in which case, the matter will either be referred to OAL, or the Council shall schedule a hearing at a subsequent meeting.
- If it deems it necessary, the Council directs an *in camera* or closed session inspection of a record the custodian claims is privileged or not accessible to the public.

If a hearing before the Office of Administrative Law is held, the Council will review the Administrative Law Judge's Initial Decision and issue its own Final Decision, accepting the Initial Decision, accepting it with modifications or rejecting it. Any party disagreeing with the Council's Final Decision may file an appeal with Appellate Division of the Superior Court.